

(3) The establishment of policies and procedures to ensure that private school children with disabilities receive services consistent with the requirements of section 613(a)(4)(A) of the Act, §§ 300.451–300.452, and 34 CFR §§ 76.651–76.662.

(b) After determining that a by-pass is required, the Secretary arranges for the provision of services to private school children with disabilities in the State in a manner consistent with the requirements of section 613(a)(4)(A) of the Act and §§ 300.451–300.452 by providing services through one or more agreements with appropriate parties.

(c) For any fiscal year that a by-pass is implemented, the Secretary determines the maximum amount to be paid to the providers of services by multiplying—

(1) A per child amount that may not exceed the amount per child provided by the Secretary under this part for all children with disabilities in the State for the preceding fiscal year; by

(2) The number of private school children with disabilities (as defined by §§ 300.7(a) and 300.450) in the State, as determined by the Secretary on the basis of the most recent satisfactory data available, which may include an estimate of the number of those children with disabilities.

(d) The Secretary deducts from the State's allocation under this part the amount the Secretary determines is necessary to implement a by-pass and pays that amount to the provider of services. The Secretary may withhold this amount from the State's allocation pending final resolution of any investigation or complaint that could result in a determination that a by-pass must be implemented.

(Authority: 20 U.S.C. 1413(d)(2))

#### DUE PROCESS PROCEDURES

SOURCE: Sections 300.482 through 300.486 appear at 49 FR 48526, Dec. 12, 1984, unless otherwise noted.

#### § 300.482 Notice of intent to implement a by-pass.

(a) Before taking any final action to implement a by-pass, the Secretary provides the affected SEA with written notice.

(b) In the written notice, the Secretary—

(1) States the reasons for the proposed by-pass in sufficient detail to allow the SEA to respond; and

(2) Advises the SEA that it has a specific period of time (at least 45 days) from receipt of the written notice to submit written objections to the proposed by-pass and that it may request in writing the opportunity for a hearing to show cause why a by-pass should not be implemented.

(c) The Secretary sends the notice to the SEA by certified mail with return receipt requested.

(Authority: 20 U.S.C. 1413(d)(3)(A))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

#### § 300.483 Request to show cause.

An SEA seeking an opportunity to show cause why a by-pass should not be implemented shall submit a written request for a show cause hearing to the Secretary.

(Authority: 20 U.S.C. 1413(d)(3)(A))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

#### § 300.484 Show cause hearing.

(a) If a show cause hearing is requested, the Secretary—

(1) Notifies the SEA and other appropriate public and private school officials of the time and place for the hearing; and

(2) Designates a person to conduct the show cause hearing. The designee must not have had any responsibility for the matter brought for a hearing.

(b) At the show cause hearing, the designee considers matters such as—

(1) The necessity for implementing a by-pass;

(2) Possible factual errors in the written notice of intent to implement a by-pass; and

(3) The objections raised by public and private school representatives.

(c) The designee may regulate the course of the proceedings and the conduct of parties during the pendency of the proceedings. The designee takes all